

**BEFORE THE
DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Petition for)
Penalty Reduction of:)

GARY A. CHASE, M.D.)
Certificate #G-18665)

File No: 06-90-2133

Petitioner.)
_____)


DECISION

The attached Proposed Decision in the Matter of the Petition for Penalty Reduction is hereby adopted by the Division of Medical Quality of the Medical Board of California as its Decision in the above-entitled matter.

This Decision shall become effective on August 30, 1996.

DATED July 31, 1996.

**DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA**



Ira Lubell, M.D.
Division of Medical Quality

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DIVISION OF MEDICAL QUALITY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Petition For)	
Termination of Probation)	OAH No. L-9509065
)	
Gary A. Chase, M.D.)	
)	
Petitioner.)	
)	
)	
)	

PROPOSED DECISION

On June 4, 1996, in San Diego, California, Stephen E. Hjelt, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Heidi Weisbaum, Deputy Attorney General, represented the California Attorney General's Office.

Mark Levin, Attorney at Law, represented Gary A. Chase, M.D.

Evidence was received, the record was closed and the matter was submitted for decision of June 4, 1996.

FINDINGS OF FACT

I

On or about October 2, 1995, Petitioner signed a Petition for Reduction of Penalty-Termination of Probation. The effective date that discipline began was October 1, 1993. Petitioner is currently on probation to the Board for a period of five years. He has now completed a little over one half of that probation. The disciplinary matter that formed the basis of his probation involved a breach of his fiduciary duty to a female patient who he became involved with in a romantic way from July 1987 to July 1989. This romantic relationship grew out of the therapy process and reflected clearly a mishandling of the therapeutic alliance by petitioner.

Petitioner and the patient began their relationship one day following the "termination" of therapy. The word termination is italicized only to highlight that there was no therapeutically

professional termination of this relationship and petitioner readily acknowledges this fact.

II

Petitioner's license was revoked, with revocation stayed and five years probation for gross negligence involving a sexual relationship he had with a patient.

Petitioner's administrative trial took place in May and June 1992. Petitioner did not contest nor deny the misconduct. He acknowledged it and stipulated to the facts justifying the imposition of administrative discipline. The weight of the evidence at the original administrative hearing led the administrative law judge to find:

"In sum, respondent fell in love with a patient, attempted a termination of the therapist-patient relationship and thereafter had an intimate, personal relationship. This was the sole deviation by respondent from a long history of sound professional judgment. The evidence established that respondent's conduct was a situational aberration which will not recur."

Finding 16 of the original Proposed Decision.

The administrative law judge revoked petitioner's license but stayed the revocation and placed him on two years probation with no period of actual suspension.

This original decision was issued on July 6, 1992. On September 15, 1992, pursuant to Government Code section 11517, the Division of Medical Quality issued a notice of non-adoption of the Proposed Decision. While the matter was pending, the parties entered into a Stipulation in Settlement, Decision and Order. Paragraph 8 recognized the unusual nature of the case. It read as follows:

"The parties recognize the unique nature of the facts of this case, particularly respondent's presentation of extensive evidence of his rehabilitation which commenced in January 1988, and has continued without interruption for in excess of five years. In recognition of the particular circumstances of this case and respondent's evidence of rehabilitation, all parties to these proceedings enter into this Stipulation which is jointly offered as a fair, equitable and reasonable resolution of the Accusation

which satisfies the Division's duty to protect the public."

The Stipulation, which was adopted by the Board, revoked petitioner's license but the revocation was stayed with 30 days actual suspension and five years probation. It was adopted by the Board on September 10, 1993 to be effective October 1, 1993.

It is clear that petitioner began his rehabilitative journey long ago, well before a complaint was made and that there were, therefore, significant factors justifying discipline less than outright revocation. Sexual misconduct is a most serious type of misconduct and generally would justify the extreme sanction of outright revocation. In entering into the stipulated settlement it is clear that there were special circumstances extant that justified a less severe form of discipline.

III

Revocation of a physician's license, whether it is outright or stayed, does interesting things to people. Some find another profession, all the while denying any wrongdoing and blaming the system for their misfortune. Some attempt re-licensure without changing their attitude or their style of practice, believing that the passage of time is all they must endure. Others do the best they can with what they have, although sometimes that's not enough. Still others start out kicking and screaming about the injustice of their discipline and slowly come to understand that they are far less important than the profession they were once a member of. There is also another class of licensee who are profoundly moved by their ordeal and make real positive changes in their life and career. Petitioner has made such a journey. Petitioner was not a celebrity doctor but his star had risen to heights that were quite intoxicating. He became a very large player in the family law system of the Los Angeles Superior Court. He was often used and highly sought after as a custody evaluator, a frequent presenter of special seminars to large groups of family lawyers, including CEB programs. He rose very rapidly to a position of power and prominence. His professional and personal world came tumbling down around him when the patient complaint became public. He was shamed and disgraced and lost his status as a much admired and respected professional. There is no doubt that he suffered these consequences because he deserved them. He earned this fair and square. There is nothing in the record that suggests in any way that petitioner feels sorry for himself or blames anyone else. He clearly and unequivocally accepts sole responsibility for his misconduct and the harm he did to his patient, his family and his profession.

IV

The statute which authorizes this proceeding (Business and Professions Code section 2307) mandates minimum time requirements for Petitions for Termination of Probation. For termination of probation of three years or more at least two years on probation must be served. Here, the statutory time requirement has been met. The only serious question is whether petitioner has established that further probationary oversight would be superfluous.

V

Petitioner is 54 years old and resides in Santa Monica, California with his wife. He has two daughters, both of whom have graduated from college. He received his undergraduate degree from Rutgers University and his medical degree from Chicago Medical School in 1969. He did internship and residency in psychiatry and has been board certified in both adult and child psychiatry since 1979. He also has a Ph.D. from the Southern California Psychoanalytic Institute in 1984.

VI

The notion of rehabilitation is a fundamental part of our jurisprudence and our culture. Giving people a fresh start and not punishing in perpetuity is a basic tenet of the Judeo-Christian ethic that suffuses much of our notions of law and punishment. However, people must earn their second chance. The criminal law erroneously relied on the passage of time incarcerated to teach criminals a lesson. Recidivism rates have demonstrated the lack of success focusing solely on the passage of time.

The administrative disciplinary process in California is far more successful (although far from perfect) in assessing rehabilitation of licensees who have been disciplined for various acts of professional misconduct. The mere passage of time is not in and of itself proof of rehabilitation. The burden rests squarely on the petitioner to present evidence that is persuasive. The Board relies on Administrative Law Judges who are specialists within the Office of Administrative Hearings and appointed to the Medical Quality Hearing Panel pursuant to Government Code section 11371 to hear these matters and make informed recommendations to the Board. Business and Professions Code section 2307 gives the Board through the Administrative Law Judge broad discretion to tailor the granting of reinstatement or early termination of probation with terms and conditions deemed necessary to protect the public and insure the doctor a safe, comfortable and medically appropriate transition back to mainstream practice. In this case, it is determined that no such transitional conditions are necessary since the transitional

conditions are the probationary conditions petitioner has satisfactorily complied with.

Furthermore, section 2307 specifically enumerates a non exhaustive set of factors that the Administrative Law Judge may consider. The Legislature clearly intended that close scrutiny be given to claims for reinstatement of revoked certificate or early termination of probation. The Administrative Law Judge should inquire into, among other things, "all activities of the petitioner since the disciplinary action was taken, the offense for which the petitioner was disciplined, the petitioner's activities during the time the certificate was in good standing, and the petitioners rehabilitative efforts, general reputation for truth, and professional ability." In all such reviews the Administrative Law Judge must be guided in his or her recommendations by the unambiguous statement of public policy contained in Business and Professions Code section 2229.

Section 2229 (a) states clearly that protection of the public "shall have the highest priority. . . for the administrative law judges of the Medical Quality Hearing Panel in exercising their disciplinary authority."

Subparagraph (b) of section 2229 recognizes the appropriateness of rehabilitation of physicians by stating, "In exercising his or her disciplinary authority an administrative law judge of the Medical Quality Hearing Panel shall, wherever possible, take action that is calculated to aid in the rehabilitation(emphasis added) of the licensee. . ." (emphasis added).

Of crucial significance is subparagraph (c) of section 2229 which acknowledges that the Administrative Law Judge must balance protection of the public with the policy of wherever possible fostering the rehabilitation of licensees. Only where rehabilitation and protection of the public are inconsistent should the administrative law judge recommend denial of the petition outright.

There is no doubt that some physicians seeking early termination of probation are not satisfactory candidates. Some disciplined physicians need the full period of probation called by some the tincture of time, to restore themselves to full and unconditional membership in the profession.

VII

Rehabilitation must be evaluated on the basis of two very different scales. One is an internal, attitudinal scale and the other is an external objective scale. In other words there must be a state of mind and a state of facts. The state of mind demonstrating rehabilitation is one that has a mature, measured

appreciation of the gravity of the misconduct and remorse for the harm caused. The acceptance of responsibility is a necessary prerequisite to establishing rehabilitation.

Petitioner in both his written narrative statement and his testimony at the hearing acknowledges that he alone is responsible for the position he is in. He is the architect of the empty professional house he lives in.

Petitioner points to one crucial, irreducible factor in why he is before the Medical Board-himself. In his testimony he admits that he deserved the discipline he received.

There is absolutely nothing in the record before the Administrative Law Judge to support further probationary oversight. Whether probation should be modified or terminated must be a question of whether continued probation will serve any legitimate purpose. The Legislature clearly intended to provide for early termination of probation if a sufficient showing was made. Here that showing has been amply supplied.

Petitioner testified and established a keen understanding of what led to his discipline. He makes no excuses for it, is shamed by the experience and has devoted an exceptional amount of personal effort to insuring that such conduct will not be repeated. His personal journey since the revocation- stayed discipline was imposed has been one of hard work and devotion to justifying being trusted to treat patients again without probationary oversight. Petitioner does not deserve a medal or special praise for his rehabilitative efforts. He has simply done what he should have done, complied with the terms and conditions of his probation. But in doing so he has demonstrated that he does not need the full five years of probationary oversight to insure public safety.

The Administrative Law Judge has had the opportunity to assess the credibility of the petitioner while he testified and to correlate his answers with the entire written record available. The Administrative Law Judge has also had the opportunity to evaluate petitioner's demeanor during the hearing both on direct examination and also on cross examination. No one has the special intuitive gift to assess and evaluate another person's heart. What we do have is the ability to judge words against actions to see if they are consistent. Petitioner's behavior during the hearing was consistent with his words. He had a perspective few of us (thankfully) have. He went from the penthouse to the basement without any intermediate stops. He was shamed and humbled and this humility was honestly expressed.

The weight of the evidence supports a finding that petitioner has the requisite state of mind that would justify consideration of terminating probation.

VIII

To qualify for re-licensure petitioner must show a state of facts as well. He must show a state of facts demonstrated by a course of conduct that convinces and assures the Board that the public would be safe in granting early termination of probation. Petitioner must show a track record of reliable, responsible and consistently appropriate conduct.

Since discipline was imposed, petitioner:

1. is not on criminal probation or parole.
2. is not charged in any pending criminal action
3. has not been convicted of any criminal offense
4. has not been charged or disciplined by any medical board
5. has not been disciplined by any hospital as to staff privileges
6. has not had any civil malpractice claims filed against him
7. is not addicted or habituated to alcohol or drugs
8. has not been hospitalized for alcohol or drug problems or for mental illness.

Petitioner's personal actions since his misconduct are important yardsticks by which to judge his rehabilitative efforts. His narrative statement and his testimony at the hearing were consistent and sincere and contrite. Dr. Chase rose in a short time to very prominent place in the world of family law litigation in Los Angeles County. He was highly sought after as an evaluator and sought after as a speaker to the specialized family law bar. This position of public prominence was intoxicating. His fall from the pinnacle is a great one and Dr. Chase experienced this full force. His loss was two-fold. He lost a position of power and influence. He also lost his reputation. To some people this would be dismissed as bad luck and their focus would be solely in getting back their power and status. The record shows that Dr. Chase instead first focused on dealing directly with the reasons why this event happened. He first explored why he engaged in a boundary violation so elemental and damaging that he could say in retrospect "...I am astounded by the empty headed state of denial I had reached. Although I had consulted with another therapist, I was unswayed in my behavior." (Petitioner's narrative page 4.) Petitioner has experienced shame, guilt and remorse, all in heavy doses. He should have. The key to this is that his emotions were authentic

and appropriate. He now knows and understands the multiple layers of harm he has visited on his patient, his family, his profession and lastly himself. Petitioner does not in any way attempt to blame his patient or deflect responsibility. This finding is strongly made and is made based upon the entire context of this case from the original discipline to his testimony in court. Dr. Chase is one physician whose shame and embarrassment and recognition of his own flaws has cauterized him. The record of rehabilitative efforts and petitioner's strong desire to be once again accepted among his peers make a reoccurrence extremely unlikely. Sometimes the best care giver is the one who has stumbled and fallen and experienced the sting of professional opprobrium. This experience when it operates well places a physician back in the mainstream of practice better equipped to deal with the challenges of daily practice. All the evidence points to Dr. Chase being one of these physicians. He has paid the heavy price he should have for his misconduct.

Petitioner began an extended course of therapy with James Grotstein, M.D., a psychiatrist, in August 1989. He has continued to see Dr. Grotstein to the present. He and his wife began conjoint therapy with Dr. Sual Brown in 1989 until mid 1993. He credits his wife's devotion and love for helping to put his marriage back on track.

Petitioner's personal life was convulsed and ultimately transformed as a result of the complaint filed against him. So too was his professional life. He began working at hospitals for the chronically mentally ill and at the Parole Outpatient Clinic. Until the last year he continued to teach at the Southern California Psychoanalytic Institute. He has a private practice and does some child custody evaluations.

Petitioner has established a track record of consistent and appropriate behavior since the original wrongdoing that ended seven years ago that correlates with his testimony and narrative statement. The record reveals that a personal and professional transformation has taken place. He has taken those personal steps within his power to prove to the Board and the people of the State of California that he can be trusted.

IX

Petitioner has made a persuasive showing of a personal transformation, not to someone without fault and imperfection but to someone with the necessary insight to recognize that he alone bears responsibility for the discipline imposed on his license. As he wrote in his narrative statement to the Board at page 7, "I blame no one but myself and I regret the burden I have been to everyone concerned as a result of my misconduct."

Although testimonial letters from social acquaintances, business associates or other physicians are of limited value, those submitted in this case are valuable to show a man who was stripped of his reputation and has learned the right lesson from it. The letters and the testimony of those at the hearing paint a picture of a very gifted caregiver who has found the way back to his foundation as an ethical practitioner.

DETERMINATION OF ISSUES

I

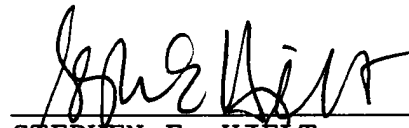
Cause was established pursuant to Business and Professions Code section 2307 to grant petitioner's request for early termination of probation, by reason of Findings of Fact II through IX.

ORDER

I

The petition of Gary Chase, M.D. for termination of probation of his Physician and Surgeon's Certificate is granted.

Dated: July 1, 1996.



STEPHEN E. HJELT
Administrative Law Judge
Office of Administrative Hearings